IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No.1556 of 2002 alongwith CWPs No.1564, 1600, 1601 to 1608, 1557 to 1573, 1579, 1580, 1582 to 1594, 1608, 1581, 1674, 1675, 1676, 1686 of 2002, 29, 102, 103 and 209 of 2003

Reserved on : 19th April, 2007
Date of Decision: 8th May, 2007

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1. CWP No. 1556 of 2002
   Vijay Kumar Versus B.B.M.B. and another
2. CWP No. 1564 of 2002
   Ganga Ram Versus B.B.M.B. and another
3. CWP No. 1600 of 2002
   Katku Ram Versus B.B.M.B. and another
4. CWP No.1601 of 2002
   Sita Ram Versus B.B.M.B. and another
5. CWP No.1602 of 2002
   Sita Ram Versus B.B.M.B. and another
6. CWP No.1603 of 2002
   Muni Lal Versus B.B.M.B. and another
7. CWP No.1604 of 2002
   Dharam Singh Versus B.B.M.B. and another
8. CWP No.1605 of 2002
   Jagdish Kumar Versus B.B.M.B. and another
9. CWP No.1606 of 2002
   Mohinder Singh Versus B.B.M.B. and another
10. CWP No.1607 of 2002
    Gawanoo Ram Versus B.B.M.B. and another
11. CWP No.1608 of 2002
    Roop Singh Versus B.B.M.B. and another
12. CWP No. 1557 of 2002
    Moti Ram Versus B.B.M.B. and another
13. CWP No. 1558 of 2002
    Dila Ram Versus B.B.M.B. and another
14. CWP No.1559 of 2002
    Dhani Ram Versus B.B.M.B. and another
15. CWP No.1560 of 2002
    Sita Ram Versus B.B.M.B. and another
16. CWP No.1561 of 2002
    Maghu Ram Versus B.B.M.B. and another
17. CWP No.1562 of 2002
    Chuni Lal Versus B.B.M.B. and another
18. CWP No.1563 of 2002
    Singh Ram Versus B.B.M.B. and another
19. CWP No.1565 of 2002
    Uchhav Ram Versus B.B.M.B. and another

20. CWP No. 1566 of 2002
Kali Dass Versus B.B.M.B. and another

21. CWP No.1567 of 2002
Hem Raj Versus B.B.M.B. and another

22. CWP No.1568 of 2002
Jagat Ram Versus B.B.M.B. and another

23. CWP No.1569 of 2002
Chint Ram Versus B.B.M.B. and another

24. CWP No.1570 of 2002
Chand Ram Versus B.B.M.B. and another

25. CWP No.1571 of 2002
Paras Ram Versus B.B.M.B. and another

26. CWP No.1572 of 2002
Jagat Ram Versus B.B.M.B. and another

27. CWP No.1573 of 2002
Dagu Ram Versus B.B.M.B. and another

28. CWP No.1579 of 2002
Sewak Ram Versus B.B.M.B. and another

29. CWP No.1580 of 2002
Torhdu Ram Versus B.B.M.B. and another

30. CWP No.1582 of 2002
Teju Versus B.B.M.B. and another

31. CWP No.1583 of 2002
Balbir Chand Versus B.B.M.B. and another

32. CWP No.1584 of 2002
Roshan Lal Versus B.B.M.B. and another

33. CWP No.1585 of 2002
Himat Ram Versus B.B.M.B. and another

34. CWP No.1586 of 2002
Munshi Ram Versus B.B.M.B. and another

35. CWP No.1587 of 2002
Gulab Singh Versus B.B.M.B. and another

36. CWP No.1588 of 2002
Joginder Singh Versus B.B.M.B. and another

37. CWP No.1589 of 2002
Mangloo Ram Versus B.B.M.B. and another

38. CWP No.1590 of 2002
Roshan Lal Versus B.B.M.B. and another

39. CWP No.1591 of 2002
Polo Ram Versus B.B.M.B. and another

40. CWP No.1592 of 2002
Bhikham Ram Versus B.B.M.B. and another

41. CWP No.1593 of 2002
Rajinder Versus B.B.M.B. and another

42. CWP No.1594 of 2002
Bhagat Ram Versus B.B.M.B. and another

43. CWP No.1581 of 2002
Krishan Lal Versus B.B.M.B. and another

44. CWP No.1674 of 2002
Singh Ram Versus B.B.M.B. and another

45. CWP No.1675 of 2002
Sidhu Ram Versus B.B.M.B. and another

46. CWP No.1676 of 2002
Lal Singh Versus B.B.M.B. and another
47. CWP No.1686 of 2002
Lohar Versus B.B.M.B. and another
48. CWP No.29 of 2003
Hari Singh Versus B.B.M.B. and another
49. CWP No.102 of 2003
Durga Dass Versus B.B.M.B. and another
50. CWP No.103 of 2003
Paras Ram Versus B.B.M.B. and another
51. CWP No.209 of 2003
Kashmir Singh Versus B.B.M.B. and another

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]? Yes.

For the petitioners: Mr.Y.P.S.Dhaulta, Advocate
in Sl.No.1 to 47 & 51

For the petitioners Mr.B.C.Negi, Advocate.
in Sl. No.48,49,50 :

For the respondents: Mr.N.K.Sood, Advocate.

Sanjay Karol, J.

By this common judgment, all the above writ petitions are being heard and decided together as the facts in all the writ petition are similar and the question of law is identical.

Between the year 1993 and 1995 various petitions were filed by different persons including the petitioners herein before this Court wherein it was contended that since 1972 onwards petitioners were working as employees of the Beas Construction

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Whether the reporters of Local Papers are allowed to see the Judgment?

Board and Bhakra Beas Management Board (hereinafter referred to respondents). Instead of being regularized they were being disengaged in order to accommodate certain persons having brought from Ranjit Sagar Dam Project. The said action was stated to be contrary to the assurances given to the petitioners and many other employees that they would not be disengaged and that their services would be regularized. The respondents' decision contained in the letter dated 18th November, 1988, to convert all work charged posts into regular and to fill them up on the basis of seniority was also pressed in their support. Relying upon the averments made by the petitioners, this Court passed interim orders of similar nature, one of which (CWP No.1291 of 1995) is reproduced hereinafter:-

> "The aforesaid circumstances make out a prima facie case in favour of the petitioners and therefore, we direct the respondents to engage the petitioners till further orders. They are also directed that the cases of the petitioners will be considered for engagement and regularization in preference to those who are being engaged from Ranjit Sagar Dam Project. In case some people have already joined that would not affect the re-engagement, regularization and seniority of the petitioners."

The aforesaid writ petitions were finally disposed of on 9th October, 1996. It was observed in the order that the petitioners therein, some of whom are petitioners now were not in service as on the date of filing of the writ petitions and were only engaged by virtue of the directions and the interim orders passed by the Court and resultantly the interim orders could not be continued. The Court directed the writ petitioners to file representations before the respondents giving full details of service rendered by the petitioners alongwith record as may be available with them. The Court specifically directed that the representations were to be considered for the posts vacant as on 31st August, 1993, i.e. the cut off date fixed by the Court itself. It was directed that it would be open for the Board to take such further action as may be necessary even before consideration of the representations. Vide Office Order dated 18th October, 1996, the respondents disengaged the services of various employees, including the petitioners herein, with immediate effect.

Thereafter, the Central Government vide Notification dated 21st November, 2000 referred the dispute pertaining to the disengagement of the petitioners herein to the Tribunal. One such Reference is reproduced as under:-

> "Whether the action of the Chief Engineer, BSN Project, BBMB Sundernagar (HP) and Executive Engineer, Electrical and Workshop Division, BBMB Sundernagar, District Mandi (HP) in disengaging Shri Mahender Singh from service on 19.10.1996 (FN) without notice is legal and justified? If not, to what relief the workman is entitled."

The petitioners filed claim petitions stating therein that they had been working on daily wages with the management in different divisions of the respondents and their services were terminated without any prior notice or payment of compensation in gross violation of Section 25-F of the Industrial Dispute Act (hereinafter referred to as the Act). They had completed 240 days and that the management had employed outsiders ignoring the seniority of the workmen and preference as stipulated in Section 25-H of the Act.

In response thereto, the respondents in the written statement while brining on record the entire history categorically stated that prior to 31st August, 1993, the cut off date fixed by the High Court, none of the petitioners herein/ claimants had completed 240 days of continuous service. The services of the petitioners were disengaged on 18th October, 1996 i.e. after the vacation of ex parte order of re-engagement. The services rendered by the

petitioners by virtue of the interim directions of the Court cannot be considered and taken into account for calculating the number of days as is required under Section 25-B for the purposes of Section 25-F of the Act. Their services cannot be taken into account except for the purpose of making wages during this period.

Having considered the rival contentions of the learned counsel for the parties, the Industrial Tribunal –cum Labour Court, Chandigarh, (referred to Tribunal) held that the services rendered by the petitioners by virtue of the interim orders passed by the High Court cannot be calculated for the purposes of computation of 240 days of service with the management.

Learned counsel for the parties agree that the factual matrix is limited and admitted. (i) None of the petitioners before this Court were in the employment of the respondents at the time of filing the earlier Civil Writ Petitions before this Court; (ii) The same were decided by a common order dated 9th October, 1996 passed in Civil Writ Petition No. 1245/1993; (iii) 31st August, 1993 is the cut off date fixed by the High Court and even as on that date they were not in regular employment of the respondents or had served for more than 240 days preceding the said date and (iv) Petitioners were engaged by the

respondents only by virtue of the interim orders passed by this Court in different/each writ petitions filed by the petitioners herein.

Mr.Dhaulta appearing for the petitioners has contended that Sections 25-B or 25-F of the Act does not specify how 240 days are required to be completed. There is no bar in computing the period of services rendered pursuant to the orders passed by the Court. According to him, the only requirement is that the employee should be in employment with the employer for more than 240 days, 12 months preceding the date of his disengagement. Provisions of Section 25-F of the Act are to be liberally constructed. His argument in the alternative is that in any event there is serious infraction of Sections 25-N and 25-O of the Act inasmuch as no permission of the Central Government had been obtained, either for retrenchment or for closer of the unit. He has further submitted that the respondents have violated the provisions of Section 25-H of the Act inasmuch as they have engaged/ re-engaged persons, who were junior to the petitioners or have given new employment to fresh persons. In support of his contentions he has relied upon Dhari Gram Panchayat vs. Saurashtra Mazdoor Mahajan Sangh and another, reported in (1987) 4 SCC 213, Mohan Lal vs. The Management of M/s Bharat Electronics Ltd., 1981 Lab. I.C. 806, Lal Mohammad

and others vs. Indian Railway Construction Co. Ltd. and others, AIR 1999 SC 355, Central Bank of India vs. S.Satyam and others, AIR 1996 SC 2526 and Workmen of Sudder Workshop of Jorehaut Tea Co. Ltd. v. The Management of Jorehaut Tea Co. Ltd., AIR 1980 SC 1554.

Mr. B.C.Negi, learned counsel for some of the petitioners has referred to a decision in Workmen of American Express International Banking Corporation vs. Management of American Express International Banking Corporation, AIR 1986 SC 458

In response to the submissions of the learned counsel for the petitioners, Shri N.K.Sood, learned counsel for the respondents, apart from reiterating the stand of the respondents in the counter affidavit, has submitted that the disengagement of the petitioners is not due to retrenchment or closer of the unit. Petitioners had abandoned the jobs since long and were not in the employment of the respondents. Consequently, there is no infraction of provisions of Sections 25-F, 25-N and 25-O. He has taken pains to contend that in any case the case of the petitioners does not fall within any of the exceptions laid down under Section 25-B(a)(ii) of the Act, consequently the services rendered by the petitioners after August, 1993 on the strength of interim orders passed by the High Court

in various matters cannot be counted for the purposes of computation of 240 days as required under Sections 25-B and 25-F of the Act. The relationship of employer and employee was involuntary. No juniors have been re-engaged or retained by the respondents. Consequently provisions of Section 25-H would not apply. To meet the arguments of Mr. Dhaulta with regard to applicability of Sections 25-N and 25-O, he has submitted that the provisions are inapplicable and in any event the same would come into operation only and only if the petitioners fulfilled the eligibility criteria laid down under Section 25-B of the Act. According to him, there is no infraction of any of the provisions of Part V of the Act. In support of his contentions, he has relied upon Committee of Management, Arya Nagar Inter College, Arya Nagar, Nagar, Kanpur vs. Sree Kumar Tiwary and another, 1997(2) Labour Law Journal 797 = (1997) 4 SCC 388, Panipat Thermal Power Project Station and State of Haryana and others, 1996(2) LLN 735 and LPA No.958 of 2002, titled as BBMB and others vs. Kewal Singh, decided on 3.5.2004 by the Punjab and Haryana High Court.

I proceed to decide as under:-

The controversy in issue boils down to the question as to whether the services rendered by the workman by virtue of interim order passed by the High

Court would be considered for counting the number of working days for the purposes of completion of mandatory 240 days in one calendar year or not.

While deciding the said issue one has also to consider as to what is the effect of the interim orders passed by the High Court in the Civil Writ Petitions.

In N.Mohanan vs. State of Kerala and others, reported in (1997) 2 SCC 556, it was contended that even though the petitioner had no right to be appointed, however, since he was appointed by the order of the Court provisionally the appointment already made should be allowed to be continued and regularized. The Supreme Court upheld the orders passed by the High Court whereby this contention was rejected. The Court held that the interim order is subject to the result of outcome of the final adjudication. If the petitioner was not successful in the final decision the interim order would stand set aside. So the appointment by the interim order does not create any right nor does the petitioner get any right of regularization on that basis.

In State of U.P. and others, vs. Raj Karan Singh, reported in (1998) 8 SCC 529, the Court held as under:-

> "Besides, merely because a person continues under the interim orders of the Court, such continuance on the post cannot and, in this case, does not confer on him any right for continuance, it does not enhance his case for regularization. It is only an interim arrangement pending decision by the Court and cannot disturb the position in law or equities, as on the date of the petition."

The decision in Guru Nanak Dev University vs. Parminder Kr. Bansal and others, reported in (1993)4 SCC 401, is also to the same effect.

In MD, U.P. Land Development Corporation and another vs. Amar Singh and others, reported in (2003) 5 SCC 388, while dealing with the engagement of Assistant Project Manager in Agriculture University whose services were continued on the strength of interim order passed by the Court, the Court held that by virtue of an interim order passed in the writ petition, it was not open for the employees to claim benefit of regularization of their services as a matter of right. The Court further held that directions cannot be given to regularize their services in the absence of any existing vacancies nor any direction can be given to the State to create post in non-existent establishment. Any such direction would actually amount to creating post

and continuing them despite non-availability of the work.

In Surinder Prasad Tiwari vs. U.P.Rajya Krishi Utpadam Mandi Parishad and others, reported in (2006) 7 SCC 684, while dealing with an employee who continued to be in service for more than 14 years by virtue of an interim order granted by the High Court, the Court negatived the contention of the employee that he be permitted to be regularized having officiated for 14 long years.

In Secretary, State of Karnataka and others vs. Uma Devi and others, (2006) 4 SCC 1, the Court has held as under:-

> "Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee

> who is really not required. The Courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates."

In Sree Kumar Tiwary (supra) [(1997) 4 SCC 388), while dealing with the issues to whether the respondent was continuously serving the Institution under Section 33-B(i)(c) of the U.P. Secondary Education services Commission Act, the Court held that since the petitioner therein continued to be in employment subsequent to his termination, by virtue of stay order passed by the Court, he could not have been regularized as his continuance in office was not by virtue of his own right under an order of appointment. His continuance in office was not with the permission of the management.

In the decision of *Panipat Thermal Power Project Station* (supra) under the Industrial Disputes Act, it has been held that the period during which the workman was working under the orders of the High Court passed in the Civil Writ Petition cannot be taken into account for continuing the stipulated period of 240 days under the Industrial Disputes Act.

Kewal Singh (supra) is also to the same effect.

The judgment referred to by Mr. Negi, learned counsel for the petitioner in *Workmen of American Express International Banking Corporation* (supra), is, in my view, not applicable for the following reasons:-

(i) The issue in the said judgment was as to whether Sundays and other paid holidays would be taken into account for the purposes of reckoning total number of days on which the workman could be said to have actually worked. The employment being contractual and gainful, the Court while liberally construing the provisions of the Act held that the same being beneficial legislation, Sundays and holidays would be included for the purposes of computation of working days as required under Sections 25-B and 25-F. This is not the case in hand and (ii) In the present case admittedly the petitioners were not in gainful employment prior to their having approached the Hon'ble Court wherein interim order of engagement was passed in their favour.

The case law cited by Mr. Dhaulta is not relevant/applicable at all. *Central Bank of India* (supra) has been cited to contend that there were persons junior to the petitioners, who have been retained/re-engaged and therefore the petitioners services could not have been disengaged. This is also not the case in hand.

Admittedly, this was also not a case of the petitioners before the Industrial Tribunal. Names of some persons junior to the petitioners allegedly retained by the respondents have been mentioned in the writ petition. In response thereto in the counter-affidavit the respondents have stated that the B.B.M.B. is a statutorily constituted Board under the provisions of Punjab Re-organisation Act, 1966 and is charged with the responsibility of operation, administration and maintenance of the works as defined under the Punjab Re-organisation Act, 1966 which includes Bhakra Nangal and Beas Satluj Link Project. For the said works, in each division posts were sanctioned, which were filled up in accordance with law. But for some seasonal, contingent and casual jobs daily rated workers including the petitioners had been engaged, whose nature of job was also intermittent. In compliance to directions made in CWP No. 27of 1988 made by this Court, departmental instructions placed on record of the case qua employment/ deployment/termination/ re-engagement and seniority of daily rated workers were upheld. The instructions are for maintaining the seniority of the daily rated workers in each division at the Divisional level. The directions when again challenged in the writ petition No.274/90 were upheld by this Court in decision dated 19.7.1990 which was

also upheld by the Apex Court on 23.11.1990 and thus rendering finality to the process of maintaining Division-wise finality to the seniority at Division level of the daily rated workers in the concerned division of their respective employment. It is also stated that the respondents have struck to the principle of seniority in the matter of re-engagement and dis-engagement of daily wagers as and when such contingency has arisen in a particular division. No juniors have been re-engaged or retained. It is also stated that the petitioners have not given the complete particulars like parentage, address, place/ division or employment etc. of the persons mentioned in the petition. It is further stated that Section 25-N of the Act is not attracted in the facts and circumstances of the case. Junior persons as alleged by the petitioner have not been retained or re-engaged. There is no rebuttal by the petitioners to the same.

Dhari Gram Panchayat (supra) was a case where by a consent order passed in the writ petition, the workman was directed to be reinstated but on the same day they were subsequently retrenched from their services. On a reference under the Industrial Disputes Act, the Labour Court held on merits that the action of the Panchayat was malafide but since the reference was incompetent as Octroi department

was not an industry, the claim was turned down. Assailing the said order, the workmen filed the writ petitions and the High Court held that the action of the Panchayat is mala fide and that the employer was an industry within the meaning of the provisions of the Act. In an appeal under Article 136 of the Constitution, the Supreme Court upheld the order of the High Court on the ground that the action of the Panchayat was malafide.

In so far as the present petition is concerned, the orders passed by the Court were not only interim but in fact they were vacated and the writ petitions were dismissed.

Mohan Lal (supra) has been cited to emphasis that in employment sickness, authorised leave, accident, strike, which is not illegal, lock up and cessation of work due to no fault on the part of the workman are to be ignored and taken into account as uninterrupted service for the purposes of Chapter VA.

This is not the case in hand. In the present case, admittedly the petitioners were not engaged prior to their having approached this Court on different dates between the year 1993 to 1995. They were not in the voluntary employment of the respondents.

Lal Mohammad (supra) has been cited to contend that since there were more than 100 workers

employed by the respondents therein, condition precedent under the provisions of Sections 25-O and 25-N of the Act was required to be complied with.

The instant case is not a case of closer of establishment so as to attract the provisions of Sections 25-O, 25-N, 25-F and 25 FFF of the Act.

Admittedly, the petitioners were not in employment of the respondents prior to 31.8.1993 or prior to their having approached the High Court by way of separate writ petitions wherein interim orders had been passed.

The case in hand does not attract/violate the provisions of Sections 25-N, 25-O, 25-H of the Act. Further more, the provisions of Section 25-N would come into play only and only upon the petitioners fulfilling the statutory period of 240 days in a calendar year preceding 12 months as required under Sections 25-B and 25-F of the Act. Admittedly, the absence of the petitioners would not fall within any of the exemptions of Section 25-B(a)II of the Act. The petitioners have been in engagement under orders of the Court and not by virtue of voluntary contract/agreement entered into between the employer and employee. It is not on mutually acceptable terms but is borne out of an act of Court. The services rendered by petitioners during the period of the interim orders passed by the Court,

in my view, cannot be accounted and considered for computation of service period as is required under Sections 25-B and 25-F of the Act.

An order of stay granted during the pendency of the writ petition comes to an end with the dismissal of the substantive proceedings and it is the duty of the Court in such a case to put the parties in the same position as they would have been but for the interim orders of the Court and any other view would result in the act or order of the Court prejudicing a party for its no fault and would in fact mean rewarding a writ petitioner in spite of his failure. (Kanoria Chemicals and Industries Ltd. and others vs. U.P.State Electricity Board and others, reported in (1997) 5 SCC 772).

In National Institute of Technology and others vs. Niraj Kumar Singh, reported in (2007) 2 SCC 481, their Lordships of the Supreme Court have held that in the matter of appointment the State is under a constitutional obligation to give effect to the constitutional scheme of equality as enshrined under Articles 14 and 16 of the Constitution.

In order to set up and commission projects of such a magnitude at various levels persons had to be employed in different capacities for carrying out works of different nature. Admittedly the project has been commissioned. There is no further work

required to be carried out and for the purposes of maintaining the project already commissioned posts have been sanctioned and filled up. In the instant case there are no posts available. Petitioners have got no right in law to be engaged with the respondents. There is no infraction of any of the provisions of the Act in their disengagement in any form. Therefore, taking a sympathetic view, though totally misplaced, would not only be out of context but also illegal and arbitrary. An opportunity of being engaged with the respondents has to be made available to all similarly situated persons. Any direction to the contrary would only perpetuate an illegality.

For the aforesaid reasons, all the writ petitions are dismissed. However, there shall be no order as to costs. Misc. application, if any, is also dismissed.

8th May, 2007
(C)

(Sanjay Karol),
Judge.